

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH ESTEY, individually and on behalf of all others similarly situated,	
---	--

Plaintiffs,

v.

MERRILL LYNCH & CO., INC., E.
STANLEY O'NEAL, CAROL T. CHRIST,
ARMANDO M. CODINA, VIRGIS W.
COLBERT, JILL K. CONWAY, ALBERTO
CRIBIORE, JOHN D. FINNEGAN, JUDITH
MAYHEW JONAS, DAVID K.
NEWBIGGING, AULANA L. PETERS,
JOSEPH W. PRUEHER, ANN N. REESE,
CHARLES O. ROSSOTTI, LOUIS DIMARIA,
PETER STINGI and JOHN AND JANE DOES
1-20,

Defendants.

Case No. 07-CV-10268 (LBS)

[additional captions follow]

***ESPOSITO PLAINTIFFS' AMENDED NOTICE OF MOTION
TO CONSOLIDATE ERISA CASES AND APPOINT INTERIM LEAD PLAINTIFFS
AND INTERIM CO-LEAD COUNSEL***

<p>MARY GIDARO, individually and on behalf of all others similarly situated,</p> <p>Plaintiffs,</p> <p>v.</p> <p>MERRILL LYNCH & CO., INC., E. STANLEY O'NEAL, CAROL T. CHRIST, ARMANDO M. CODINA, VIRGIS W. COLBERT, JILL K. CONWAY, ALBERTO CRIBIORE, JOHN D. FINNEGAN, JUDITH MAYHEW JONAS, DAVID K. NEWBIGGERING, AULANA L. PETERS, JOSEPH W. PRUEHER, ANN N. REESE, CHARLES O. ROSSOTTI, LOUIS DIMARIA, PETER STINGI and JOHN AND JANE DOES 1-20,</p> <p>Defendants.</p>	<p>Case No. 07-CV-10273 (LBS)</p>
<p>TARA MOORE, individually and on behalf of all others similarly situated,</p> <p>Plaintiffs,</p> <p>v.</p> <p>MERRILL LYNCH & CO., INC., E. STANLEY O'NEAL, CAROL T. CHRIST, ARMANDO M. CODINA, VIRGIS W. COLBERT, JILL K. CONWAY, ALBERTO CRIBIORE, JOHN D. FINNEGAN, JUDITH MAYHEW JONAS, DAVID K. NEWBIGGERING, AULANA L. PETERS, JOSEPH W. PRUEHER, ANN N. REESE, CHARLES O. ROSSOTTI, LOUIS DIMARIA, PETER STINGI and JOHN AND JANE DOES 1-20,</p> <p>Defendants.</p>	<p>Case No. 07-CV-10398 (LBS)</p>

GREGORY YASHGUR, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

MERRILL LYNCH & CO., INC., E.
STANLEY O'NEAL, CAROL T. CHRIST,
ARMANDO M. CODINA, VIRGIS W.
COLBERT, JILL K. CONWAY, ALBERTO
CRIBIORE, JOHN D. FINNEGAN, JUDITH
MAYHEW JONAS, DAVID K.
NEWBIGGERING, AULANA L. PETERS,
JOSEPH W. PRUEHER, ANN N. REESE,
CHARLES O. ROSSOTTI, LOUIS DIMARIA,
PETER STINGI and JOHN AND JANE DOES
1-20,

Defendants.

Case No. 07-CV-10569 (LBS)

CHRISTINE DONLON, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

MERRILL LYNCH & CO., INC., E.
STANLEY O'NEAL, CAROL T. CHRIST,
ARMANDO M. CODINA, VIRGIS W.
COLBERT, JILL K. CONWAY, ALBERTO
CRIBIORE, JOHN D. FINNEGAN, JUDITH
MAYHEW JONAS, DAVID K.
NEWBIGGERING, AULANA L. PETERS,
JOSEPH W. PRUEHER, ANN N. REESE,
CHARLES O. ROSSOTTI, LOUIS DIMARIA,
PETER STINGI and JOHN AND JANE DOES
1-20,

Defendants.

Case No. 07-CV-10661 (LBS)

<p>CARL ESPOSITO, individually and on behalf of all others similarly situated,</p> <p>Plaintiffs,</p> <p>v.</p> <p>MERRILL LYNCH & CO., INC., E. STANLEY O'NEAL, CAROL T. CHRIST, ARMANDO M. CODINA, VIRGIS W. COLBERT, JILL K. CONWAY, ALBERTO CRIBIORE, JOHN D. FINNEGAN, JUDITH MAYHEW JONAS, DAVID K. NEWBIGGERING, AULANA L. PETERS, JOSEPH W. PRUEHER, ANN N. REESE, CHARLES O. ROSSOTTI, LOUIS DIMARIA, PETER STINGI and JOHN AND JANE DOES 1-20,</p> <p>Defendants.</p>	<p>Case No. 07-CV-10687 (LBS)</p>
<p>SEAN SHAUGHNESSEY, individually and on behalf of all others similarly situated,</p> <p>Plaintiffs,</p> <p>v.</p> <p>MERRILL LYNCH & CO., INC., E. STANLEY O'NEAL, CAROL T. CHRIST, ARMANDO M. CODINA, VIRGIS W. COLBERT, JILL K. CONWAY, ALBERTO CRIBIORE, JOHN D. FINNEGAN, JUDITH MAYHEW JONAS, DAVID K. NEWBIGGERING, AULANA L. PETERS, JOSEPH W. PRUEHER, ANN N. REESE, CHARLES O. ROSSOTTI, LOUIS DIMARIA, PETER STINGI and JOHN AND JANE DOES 1-20,</p> <p>Defendants.</p>	<p>Case No. 07-CV-10710 (LBS)</p>

BARBARA BOLAND and ANNA MOLIN,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

MERRILL LYNCH & CO., INC., E.
STANLEY O'NEAL, CAROL T. CHRIST,
ARMANDO M. CODINA, VIRGIS W.
COLBERT, JILL K. CONWAY, ALBERTO
CRIBIORE, JOHN D. FINNEGAN, JUDITH
MAYHEW JONAS, DAVID K.
NEWBIGGING, AULANA L. PETERS,
JOSEPH W. PRUEHER, ANN N. REESE,
CHARLES O. ROSSOTTI, LOUIS DIMARIA,
PETER STINGI and JOHN AND JANE DOES
1-20,

Defendants.

Case No. 07-CV-11054 (LBS)

FRANCIS LEE SUMMERS, III, Individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

MERRILL LYNCH & CO., INC.; STAN
O'NEAL; LOU DIMARIA; INVESTMENT
COMMITTEE OF THE MERRILL LYNCH
SAVINGS AND INVESTMENT PLAN;
ADMINISTRATIVE COMMITTEE OF THE
MERRILL LYNCH SAVINGS AND
INVESTMENT PLAN; and JOHN DOES 1-30,

Defendants.

Case No. 07-Civ-11615 (LBS)

<p>JAMES EASTMAN, On Behalf of Himself and All Others Similarly Situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>MERRILL LYNCH & CO., INC., E. STANLEY O'NEAL, LOUIS DIMARIA, ALBERTO CRIBIORE, ARMANDO M. CODINA, VIRGIS W. COLBERT, JOHN D. FINNEGAN, AULANA L. PETERS, CHARLES O. ROSSOTTI, JILL K. CONWAY, CAROL T. CHRIST, JUDITH MAYHEW JONAS, JOSEPH W. PRUEHER, ANN N. REESE, DAVID K. NEWBIGGING, THE INVESTMENT COMMITTEE OF THE MERRILL LYNCH & CO., INC. 401(K) SAVINGS AND INVESTMENT PLAN, THE ADMINISTRATIVE COMMITTEE OF THE MERRILL LYNCH 401(K) SAVINGS AND INVESTMENT PLAN, and JOHN DOES 1-20,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 08-Civ-00058 (LBS)</p>
--	---

TO: See Attached Service List

PLEASE TAKE NOTICE that on Thursday, February 21, 2008 at 2:15 p.m., Plaintiffs Carl Esposito, Barbara Boland, and Anna Molin ("Esposito Plaintiffs") will move this court before the Honorable Leonard B. Sand, at the Daniel Patrick Moynihan United Courthouse, 500 Pearl Street, Courtroom 15-A, New York, New York 10007 to enter an order: (1) consolidating the above-captioned actions; (2) appointing the Carl Esposito, Barbara Boland and Anna Molin as Interim Lead Plaintiffs; and (3) appointing Keller Rohrback L.L.P. ("Keller Rohrback") and Cohen, Milstein, Hausfeld, and Toll, P.L.L.C. ("Cohen Milstein") as Co-Lead Counsel, with Cohen Milstein's New York office serving as liaison counsel. This Amended Notice of Motion amends the Notice of Motion previously filed on December 14, 2007 in all above captioned cases except *Summers v. Merrill Lynch & Co., Inc., et al.*, Case No. 07-11615 ("Summers") and

Eastman v. Merrill Lynch & Co., Inc., et al., Case No. 08-0058 (“*Eastman*”), which had not been docketed at that time.

The original Notice of Motion was filed with a Memorandum of Law and Declaration of Derek Loeser in Support of the *Esposito* Plaintiffs’ Motion to Consolidate ERISA Cases, Appoint Interim Lead Plaintiffs and Interim Co-Lead Counsel.¹ All moving papers previously filed on December 14, 2007 were docketed in the *Summers* and *Eastman* cases prior to the filing of this Amended Notice of Motion, which is based on the above referenced Memorandum of Law and Declaration and other papers on file in this and the related cases filed with this Court. (See DE# 7, 8, and 9 in *Summers* and DE# 4, 5, and 6 in *Eastman*)

The *Esposito* Plaintiffs will move this Court for an Order formally setting forth procedures for the efficient management of the ERISA Actions, including the appointment of Interim Lead Plaintiffs and a leadership structure for Plaintiffs’ counsel. Because the above-captioned ERISA Actions contain similar allegations and seek the same relief, in accordance with the *Manual for Complex Litigation* (4th 2004) (the “*Manual*”), in addition to consolidation, it is appropriate for the Court to enter an order setting forth procedures for the management of these cases and appointing a leadership structure for Plaintiffs’ counsel.

In accordance with the recommendations of the *Manual on Complex Litigation* (4th 2004), Plaintiffs are submitting for the Court’s consideration a [Proposed] Order Consolidating

^{1/} The Notice of Motion, Memorandum of Law and Declaration of Derek Loeser were docketed on December 14, 2007 as DE # 6 , 7 & 8, respectively in *Estey v. Merrill Lynch & Co., Inc., et al.*, No. 07-CV-10268 (LBS); as DE # 7, 8 & 9, respectively in *Gidaro v. Merrill Lynch & Co., Inc., et al.*, No. 07-CV-10273 (LBS); as DE # 6, 7 & 8, respectively in *Moore v. Merrill Lynch & Co., Inc., et al.*, No. 07-CV- 10398 (LBS); as DE # 6, 7 & 8, respectively in *Yashgur v. Merrill Lynch & Co., Inc., et al.*, No. 07-CV- 10569 (LBS); as DE # 5, 6 & 7, respectively in *Donlon v. Merrill Lynch & Co., Inc., et al.*, No. 07-CV-10661 (LBS); and as DE # 5, 6 & 7, respectively in *Shaughnessey v. Merrill Lynch & Co., Inc., et al.*, No. 07-CV-10710 (LBS).

ERISA Cases and Appointing Interim Lead Plaintiffs and Leadership Structure, which: (i) consolidates the related ERISA actions, (ii) provides for the appointment of Interim Lead Plaintiffs and their counsel, (iii) describes the duties and obligations attributable to counsel thereunder, and (iv) directs counsel to confer regarding a preliminary schedule for these proceedings. Plaintiffs' Co-Lead Counsel will coordinate and organize Plaintiffs in the conduct of this litigation, and will ensure that the interests of all Plaintiffs are represented in the prosecution of this action on behalf of the Class. Pursuant to Fed. R. Civ. P. 23(g)(2)(A), Keller Rohrback and Cohen Milstein seek appointment as Interim Co-Lead Counsel to act on behalf of the putative class before determining whether to certify the action as a class action.

All responses or replies to this Amended Notice of Motion are to be filed in accordance with Judge Sand's Individual Practices.

Dated: February 8, 2008

Respectfully submitted,

**COHEN, MILSTEIN, HAUSFELD
& TOLL, P.L.L.C.**

By: /s/
Lynda J. Grant (LG-4784)
lgrant@cmht.com
150 East 52nd Street
Thirty-ninth Floor
New York, NY 10022
Telephone: (212) 838-7797
Facsimile: (212) 838-7745

Bruce F. Rinaldi
brinaldi@cmht.com
Michelle C. Yau
myau@cmht.com
1100 New York Avenue, NW
Suite 500 West
Washington, DC 20005-3964
Telephone: (202) 408-4600
Facsimile: (202) 408-4699

Marc I. Machiz
mmachiz@cmht.com
1 South Broad Street
Suite 1850
Philadelphia, PA 19107
Telephone: (215) 825-4016
Facsimile: (215) 825-4001

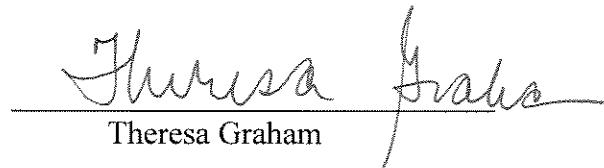
KELLER ROHRBACK L.L.P
Lynn L. Sarko
lsarko@kellerrohrback.com
Derek W. Loeser
dloeser@kellerrohrback.com
Erin M. Riley
eriley@kellerrohrback.com
Tyler L. Farmer
tfarmer@kellerrohrback.com
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
Telephone: (206) 623-1900
Facsimile: (206) 623-3384

*Counsel for the Esposito Plaintiffs and
Proposed Interim Co-Lead Counsel for the
Class*

CERTIFICATE OF SERVICE

I, Theresa Graham, hereby certify that on February 8, 2008, I caused the following documents to be served upon the person/entities and counsel of record listed on the attached service list via electronic mail.

1. *Esposito* Plaintiffs' Amended Notice of Motion to Consolidate ERISA Cases and Appoint Interim Lead Plaintiffs and Interim Co-Lead Counsel; and
2. *Esposito* Plaintiffs' [Proposed] Order Consolidating ERISA Cases, Appointing Interim Lead Plaintiffs and Interim Co-lead Counsel



Theresa Graham

SERVICE LIST

Estey v. Merrill Lynch & Co., Inc., et al., Case No. 07-10268 (LBS)
Gidaro v. Merrill Lynch & Co., Inc., et al., Case No. 07-10273 (LBS)
Moore v. Merrill Lynch & Co., Inc., et al., Case No. 07-10398 (LBS)
Yashgur v. Merrill Lynch & Co., Inc., et al., Case No. 07-10569 (LBS)
Donlon v. Merrill Lynch & Co., Inc., et al., Case No. 07-10661 (LBS)
Esposito v. Merrill Lynch & Co., Inc., et al., Case No. 07-10687 (LBS)
Shaughnessey v. Merrill Lynch & Co., Inc., et al., Case No. 07-10710 (LBS)
Boland v. Merrill Lynch & Co., Inc., et al., Case No. 07-11054 (LBS)
Summers v. Merrill Lynch & Co., Inc., et al., Case No. 07-11615 (LBS)
Eastman v. Merrill Lynch & Co., Inc., et al., Case No. 08-0058 (LBS)

<p>Wai Kin Chan, Esq. Curtis Victor Trinko, Esq. Law Offices of Curtis V. Trinko, LLP 16 West 46th Street, Seventh Floor New York, New York 10036 Fax: (212) 986-0158</p> <p>Email: kchan@trinko.com ctrinko@trinko.com</p> <p><i>Counsel for Plaintiff Elizabeth Estey and Tara Moore</i></p>	<p>Edward W. Ciolko, Esq. Joseph H. Meltzer, Esq. Joseph A. Weeden, Esq. Katherine B. Bornstein, Esq. Schiffrin & Barroway, LLP 280 King of Prussia Road Radnor, PA 19087 Fax: 610-667-7056</p> <p>Email: eciolko@sbclasslaw.com jmeltzer@sbclasslaw.com jweeden@sbclasslaw.com kbornstein@sbclasslaw.com eciolko@sbclasslaw.com</p> <p><i>Counsel for Plaintiffs Elizabeth Estey and Tara Moore</i></p>
<p>Ralph M. Stone, Esq. Thomas George Ciarlane, Jr., Esq. Amanda Claire Scuder, Esq. Shalov Stone & Bonner LLP 485 Seventh Avenue, Suite 1000 New York, New York 10018 Fax: (212) 239-4310</p> <p>Email: rstone@lawssb.com tciarlane@lawssb.com ascuder@lawssb.com</p> <p><i>Counsel for Plaintiff Mary Gidaro</i></p>	<p>Edwin J. Mills, Esq. Stull Stull & Brody 6 East 45th Street, 5th Floor New York, New York 10017 Fax: (212) 490-2022</p> <p>Email: ssbny@aol.com</p> <p><i>Counsel for Plaintiff Gregory Yashgur</i></p>

<p>Robert A. Izard, Esq. William Edward Bernarduci, Esq. Schatz Nobel Izard P.C. 20 Church Street, Suite 1700 Hartford, CT 06103 Fax: (860) 493-6290</p>	<p>Robert I. Harwood, Esq. Samuel Kenneth Rosen, Esq. Harwood Feffer LLP 488 Madison Avenue, 8th Floor New York, New York 10022 Fax: (212) 753-3630</p>
<p>Email: rizard@snlaw.net wbernarduci@snlaw.net</p>	<p>Email: rharwood@hfesq.com srosen@hfesq.com</p>
<p><i>Counsel for Plaintiff Sean Shaughnessey</i></p>	<p><i>Counsel for Plaintiff Christine Donlon</i></p>
<p>Jill S. Abrams Abbey Spanier Rodd & Abrams LLP 212 East 39th Street New York, New York 10016 Fax: (212) 624-5191</p>	<p>Arvind Khurana Lori G. Feldman Sara E. Fuks Milberg Weiss Bershad & Schulman LLP One Pennsylvania Plaza New York, New York 10119 Fax: (212) 656-1222</p>
<p>Email: jabrams@abbeyspanier.com</p>	<p>Email: akhurana@milbergweiss.com lfeldman@milbergweiss.com sfuks@milbergweiss.com</p>
<p><i>Counsel for Plaintiff Francis Lee Summers, III</i></p>	<p><i>Counsel for Plaintiff James Eastman</i></p>
<p>Paul Blankenstein, Esq. William J. Kilberg, Esq. Gibson, Dunn & Crutcher LLP 1050 Connecticut Avenue, N.W. Washington, D.C. 20036-5306 Fax: (202) 530-9532</p>	<p>Jay B. Kasner, Esq. Skadden, Arps, Slate Meagher & Flom LLP Four Times Square New York, New York 10036 Fax: (212) 735-2000</p>
<p>Email: pblankenstein@gibsondunn.com wkilberg@gibsondunn.com</p>	<p>Email: jay.kasner@skadden.com</p>
<p><i>Counsel for All Defendants, except Merrill</i></p>	<p><i>Counsel for Defendant Merrill Lynch</i></p>